STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of BRITTANY NICOLE CLEAR and KRISTINA LYNN CLEAR, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

KEVIN L. CLEAR,

Respondent-Appellant.

UNPUBLISHED
February 24, 2005

No. 254798
Calhoun Circuit Court
Family Division
LC No. 99-002083-NA
AFTER REMAND

Before: Neff, P.J., and Smolenski and Schuette, JJ.

MEMORANDUM.

Respondent appeals as of right from the February 12, 2004 order of the trial court terminating his parental rights to his two minor children. We affirm.

At all relevant times during the child protective proceedings that led up to the termination of respondent's parental rights, he was incarcerated with the Michigan Department of Corrections. On November 26, 2002, petitioner filed a complaint alleging that the minor children come within the provisions of MCL 712A.2 and obtained an order placing the children with petitioner. On that same day, a hearing was held before a referee, but the hearing was postponed until December 6, 2002 in order to provide notification to all the affected parties. Respondent was given notice of the December 6, 2002 hearing by ordinary mail.[1] The notice included notification of his right to have an attorney, and, if he could not afford one, to have one

[1] Although respondent did not contest the validity of the various notices provided to him during the child protective proceedings, we determined that there was insufficient information in the record to address the issues raised by respondent without determining what, if any, notice respondent received during the various child protective proceedings. Consequently, on December 14, 2004, we ordered the trial court to conduct a hearing, make findings regarding the notice provided to respondent, and supplement the record with any records supporting those findings. After a hearing held on December 20, 2004, the trial court determined that respondent was properly notified of the various hearings and supplied this Court with the records upon which we now rely in this summary.

appointed for him. This notice also advised respondent that, in the event that he needed a court appointed attorney, he should notify the court immediately. Respondent did not request an attorney for the December 6, 2002 hearing and did not make a request to appear at the hearing. During the December 6, 2002 hearing, the referee determined that there was probable cause to believe that one or more of the allegations in petitioner's complaint were true and authorized the filing of a petition. The referee also scheduled a pretrial hearing for January 23, 2003 and a trial for January 27, 2003.

On January 13, 2003 a summons and order to appear and a copy of the petition was served on respondent by certified mail. The summons advised respondent of the January 23, 2003 pretrial hearing and the January 27, 2003 trial. The summons included notification that respondent had the right to a court appointed attorney. Respondent again failed to request an attorney and failed to make an appearance at either the pretrial hearing or the trial. At the trial, the referee ordered the parties to comply with the case service plan, but suspended respondent's parenting time pending his appearance before the court and taking an active role in the case service plan. The referee also set up a review hearing for April 25, 2003.

Respondent was provided with notice by mail of the April 25, 2003 review hearing, including a notice of his right to an attorney. The review hearing's date was then altered to April 16, 2003, and respondent was again notified by mail. Respondent again failed to request that an attorney be appointed for him and failed to make any request to appear at the hearing. At the April 16, 2003 hearing, the referee scheduled a combined permanency planning and review hearing for July 18, 2003. Respondent was given notice of the July 18, 2003 hearing by mail and again failed to enter an appearance. At the July 18, 2003 hearing, the referee found that progress was not being made towards the return of the children to their home. Because of this finding, the referee recommended termination of respondent's parental rights.

A termination of parental rights hearing was set for October 9, 2003, but respondent refused the notice and summons sent by registered mail. As a result, the termination hearing was rescheduled for January 7, 2004. The January 7, 2004 hearing was in turn adjourned to February 12, 2004, because respondent was not properly served with a summons and notice. The trial court then ordered respondent to be brought to the February 12, 2004 hearing, and, at respondent's request, appointed counsel to represent him. At the February 12, 2004 hearing respondent's parental rights were terminated.

Respondent first contends that the trial court could not properly terminate his parental rights without first securing his presence at the hearings leading up to the termination hearing and without providing him with an attorney. We disagree.

Respondent cites no cases, court rules, or statutes in support of his contention that the trial court had an affirmative duty to ensure that he was present at each and every hearing. This is not surprising given that the court rules permit the various types of proceedings to occur without the physical presence of the respondent,[2] and the applicable statutes only require notice

[2] See MCR 3.962(B) ("A preliminary inquiry need not be conducted on the record or in the presence of the parties."); MCR 3.965(B)(1) ("The preliminary hearing . . . may be conducted in (continued…)

of the proceedings.[3] Furthermore, while this Court has held that due process requires the trial court to make more efforts beyond mere notice to secure the presence of an incarcerated respondent at a termination hearing, see *In re Vasquez*, 199 Mich App 44, 47; 501 NW2d 231 (1993), this is not an issue in this case, because the trial court actually compelled respondent's attendance at the dispositional hearing and appointed counsel to represent him. Respondent admitted that he was aware of the proceedings, and, although he stated that he did not remember receiving notice, there is clear evidence in the record that respondent was provided with notice of each proceeding. Despite his knowledge and the various notices, respondent never expressed any interest in the proceedings until he was compelled to attend the dispositional hearing. Respondent cannot now claim error based upon his own failure to request the trial court's assistance in arranging for him to have access to the child protective proceedings.

Likewise, respondent's claim that the trial court had an affirmative duty to ensure that he had court appointed counsel is without merit. While it is true that the court rules require a trial court to appoint an attorney to represent a respondent at any hearing conducted under the rules governing child protective proceedings, the rules only require this after the respondent makes a request for such an appointment. MCR 3.915(B)(1)(b)(i). As already noted, respondent received notice by registered mail of the December 6, 2002 hearing and that notice included a statement apprising respondent of his right to an attorney and informing him that he must contact the trial court immediately if he wished to exercise that right. Respondent received similar notices for the January 23 pretrial hearing, the January 27 trial, and the April 16 review hearing, but never requested that an attorney be appointed for him. Respondent did not request an attorney until he was compelled to attend the dispositional hearing, and at that time he was provided with an attorney. Under the court rules, respondent had an affirmative duty to request counsel if he could not afford an attorney, see *In re Hall*, 188 Mich App 217, 222; 469 NW2d 56 (1991), and, therefore, the trial court cannot be faulted for failing to sua sponte appoint counsel for him.

The trial court did not err by failing to secure respondent's presence at each of the proceedings leading up to the dispositional hearing and did not err by failing to appoint counsel for respondent without respondent first requesting such an appointment.

Respondent next contends that the trial court erred when it terminated his parental rights without given him the opportunity to participate in the case service plan. We disagree.

Again, respondent completely failed to cite any authority in support of his contention that the trial court was required to present him with an opportunity to participate in the case service plan and, consequently, this issue was abandoned on appeal. See *People v Van Tubbergen*, 249 Mich App 354, 365; 642 NW2d 368 (2002) ("Issues insufficiently briefed are deemed abandoned

(…continued)

the absence of the parent . . . if notice has been given or if the court finds that a reasonable attempt to give notice was made."); MCR 3.972(B)(1) (At trial, the "respondent has the right to be present, but the court may proceed in the absence of the respondent provided notice has been served on the respondent."); MCR 3.973(D)(2), (3) (Noting that a respondent has the right to be present at a dispositional hearing, or to appear through an attorney, but that the court may proceed in the absence of parties provided that proper notice has been given.).

[3] See MCL 712A.12; MCL 712A.19(5); MCL 712A.19a(5).

on appeal."). Even if the issue had not been abandoned on appeal, we would find no error. Respondent completely failed to participate in any of the proceedings before the trial court, despite his admission that he was aware of the proceedings and despite the numerous notices sent to him. Therefore, any failure to participate in the case service plan was not caused by the trial court, but rather was solely the result of respondent's own disregard of the various child protective proceedings.

Affirmed.

/s/ Janet T. Neff
/s/ Michael R. Smolenski
/s/ Bill Schuette